



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket Number USCG-2016-0986

RIN 1625-AA00

Safety Zone; Ordnance Locations, near Sugarloaf Key, FL

AGENCY: Coast Guard, DHS.

ACTION: Interim temporary final rule and request for comments

SUMMARY: The Coast Guard is establishing a temporary safety zone in the waters of the Florida Keys, near Sugarloaf Key, Florida. The safety zone is needed to protect safety of life, vessels, and the marine environment from potential hazards from recently discovered ordnance in two locations within the vicinity of American Shoal Light. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Key West or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until July 1, 2017. For the purposes of enforcement, actual notice will be used from January 17, 2017 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket,

go to <http://www.regulations.gov>, type USCG-2016-0986 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Scott Ledee, Waterways Management Division Chief, Sector Key West, FL. Coast Guard; telephone 305- 292-8768, e-mail Scott.G.Ledee@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On October 24, 2016, the Coast Guard received a report of discovered ordnance at two locations in the vicinity of American Shoal Light, near Sugarloaf Key, Florida. The United States Navy is now engaged in operations to survey and remove any hazards associated with the recently discovered ordnance.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive notice of the

unexploded ordnance operations until October 24, 2016. Publishing a NPRM and delaying its effective date would be impracticable and contrary to public interest because immediate actions is needed to protect the United States Navy divers, other vessels, and mariners from the hazards associated with the recovery of unexploded ordnance from the navigable waters of the Florida Keys, near Sugarloaf Key, Florida.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** for the same reasons discussed above.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP Key West, FL, has determined that potential hazards associated with detonating ordnance will be a safety concern for anyone within a 200-yard radius of positions 24°32.511'N, 081°29.051'W and 24°32.501'N, 081°32.781'W. This rule is needed to protect safety of life, vessels, and the marine environment in the navigable waters within the safety zone.

IV. Discussion of the Interim Temporary Final Rule

This rule establishes a safety zone immediately until the earlier of July 1, 2017, or when all ordnance recovery dive operations are complete. The safety zone will cover all navigable waters within a 200-yard radius of positions 24°32.511'N, 081°29.051'W and 24°32.501'N, 081°32.781'W. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters from exploding ordnances. No vessel or person will be

permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic will be able to safely transit around this safety zone, which will impact a small designated area of the Straits of Florida for a limited period during emergency operations.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small

entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of

government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves an emergency safety zone

implemented to protect persons and vessels in the vicinity of American Shoal Light. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this rulemaking as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T07-0986 to read as follows:

§ 165.T07-0986 Safety Zone; Ordnance Locations, near Sugarloaf Key, FL.

(a) Regulated area. The following area is a safety zone: All waters of the Atlantic Ocean, from surface to bottom, encompassed within a 200-yard radius of positions

24°32.511'N, 081°29.051'W and 24°32.501'N, 081°32.781'W. All coordinates are North American Datum 1983.

(b) Definition. The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Key West in the enforcement of the regulated area.

(c) Regulations. (1) The general regulations contained in §§ 165.20 and 165.23 apply. (2) In accordance with the general regulations, anchoring and all underwater activities within the safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(3) Persons and vessels may request authorization to enter, transit through, or anchor in the regulated area by contacting the COTP Key West or a designated representative via VHF channel 16 or call the Sector Key West Command Center by telephone at (305) 292-8808. If authorization is granted by the COTP Key West or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP Key West or a designated representative.

(4) Notwithstanding anything contained in this section, the Rules of the Road (33 CFR Chapter I, Subchapter E, part 83-90 inland navigation rules) are still in effect and must be strictly adhered to at all times.

(d) Effective period. This rule is effective until the earlier of July 1, 2017, or when all ordnance recovery dive operations are complete. This rule is effective with actual notice for purposes of enforcement on January 17, 2017.

(e) Informational broadcasts. The COTP Key West or a designated representative will

inform the public through local broadcast to mariners, broadcast notices to mariners, and the Homeport Web site of the enforcement period for the safety zone as well as any changes in the dates and times of enforcement.

Dated: January 17, 2017

J. A. Janszen,
Captain, U.S. Coast Guard,
Captain of the Port Key West.

[FR Doc. 2017-02454 Filed: 2/6/2017 8:45 am; Publication Date: 2/7/2017]